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6 **UNITED STATES DISTRICT COURT**
7 **WESTERN DISTRICT OF WASHINGTON**
8 **AT TACOMA**

9 **KOLBEY KESLER,**

10 Plaintiffs,

11 v.

12 **PUGET SOUND & PACIFIC**
13 **RAILROAD, a Delaware corporation,**

14 Defendant.

Case No. _____

COMPLAINT FOR PERSONAL
INJURIES AND DAMAGES (FELA)

JURY TRIAL DEMANDED

15 Plaintiff Kolbey Kesler, (“Plaintiff”), by and through her undersigned counsel, and for
16 his claims against Puget Sound & Pacific Railroad (“Defendant”), a Delaware corporation,
17 hereby states and alleges as follows:

18 **PARTES & JURISDICTION**

19 1. At all material times, Plaintiff was and is a resident of the state of Washington.

20 2. That at all material times, Defendant was and is a corporation duly organized and
existing under the laws of the State of Delaware.

21 3. That Defendant was and is in the business of operating a system of railroad tracks
22 in the state of Washington, and that said system included lines of track within the District where
23 this action is filed.

1 4. That at all material times, Defendant was a carrier by rail and was engaged in
2 interstate transportation and commerce in Washington State; that Plaintiff was employed by
3 Defendant as a laborer, and as such was working and engaged in the interstate transportation and
4 commerce at the times hereinafter set forth, and at such times was working in the furtherance of
5 Defendant's interstate commerce, and in work which directly, closely and substantially affected
6 the general interstate commerce carried on by said Defendant as a railroad common carrier of
7 freight for hire.

8 5. That the jurisdiction of this Court is based upon Title 45 U.S.C. § 51 et seq.,
9 commonly known as the Federal Employers' Liability Act ("FELA"); and that this action is
10 timely commenced within the meaning of 45 U.S.C. §56.

11 **FIRST CAUSE OF ACTION**
12 **SEPTEMBER 8, 2015 INCIDENT**

13 6. Plaintiff hereby realleges and incorporates by reference the allegations contained
14 in paragraphs 1 through 5 of this Complaint as though fully set forth herein.

15 7. That on or about January 29, 2018, Plaintiff was employed by Defendant as a
16 laborer and was engaged in track work near Centralia, Washington. At such time and location,
17 Plaintiff and his crew who were at the end of their work shift, were instructed to go cut, clear
18 and remove a stand of large, mature trees that had been downed and were blocking the main line
19 track near Shelton, Washington.

20 8. That amidst rainy, wet and cold weather on or about January 29, 2018, Plaintiff
21 and his crew rode a boom truck to the location on the track where trees were blocking the main
22 line. The area was very dark and the only lights available were the lights on the boom truck.

23 9. That on or about January 29, 2018, at approximately 8:00 p.m., Plaintiff was
24 instructed to use a chain saw to start cutting the trees for removal from the main line, and while
25 so engaged a large tree fell on Plaintiff, pinning him to the ground and causing him to suffer the
severe and permanent injuries and damages complained of hereinbelow.

1 10. That the injuries and damages suffered by Plaintiff as a result of the incident on
2 January 29, 2018, were caused, in whole or in part, by the negligence of Defendant, its agents,
3 employees and/or officers, and in violation of 45 U.S.C. § 51-60 et seq., including, but not limited
4 to:

- 5 a. Negligently failing to provide Plaintiff with a reasonably safe place to work as
6 required by law;
- 7 b. Negligently failing to provide Plaintiff with reasonable and adequate training,
8 instruction, and supervision for the performance of his assigned duties;
- 9 c. Negligently failing to inspect, identify, and/or remedy unreasonably dangerous
10 conditions which existed in the areas where Plaintiff was required to work;
- 11 d. Negligently failing to adequately warn Plaintiff of unreasonably dangerous and
12 hazardous conditions which existed in the area where she was required to work;
- 13 e. Negligently failing to provide Plaintiff with reasonably safe, suitable, necessary,
14 and proper equipment with which to perform his duties;
- 15 f. Negligently failing to comply with relevant and applicable federal regulations in
16 violation of 29 C.F.R. § 1910.266 *et seq.*, including, but not limited to, Section
17 1910.266(d)(5); and,
- 18 g. Other acts of negligence.

19 11. That due, in whole or in part, to Defendant's negligence under the FELA, Plaintiff
20 sustained severe and permanent injuries including, but not limited to, injuries to his overall body,
21 and his leg, knee, shoulder, back, neck, spine, and the bones, muscles, tissues, nerves, ligaments
22 and internal parts thereof; and Plaintiff has suffered in the past, and will continue to suffer pain
23 and anguish and loss of enjoyment of life, and that she was otherwise injured and disabled.

24 12. That to treat, heal, and relieve his injuries, Plaintiff has spent, and will continue
25 to spend, monies for medical and related care and treatment in amounts to be proven at trial.

 13. That as a direct result, in whole or in part, of Defendant's negligence in violation
of the FELA, Plaintiff has lost wages in the past, will continue to lose wages in the future, and

1 will sustain a permanent diminution of earning capacity and loss of fringe benefits in amounts to
2 be proven by the evidence at the trial of this matter.

3
4 **REQUEST FOR RELIEF**

5 **WHEREFORE**, Plaintiff respectfully requests that judgment be entered against the above-
6 named Defendant for recovery of special and general damages in an amount sufficient to fully
7 compensate Plaintiff for the damages and losses suffered, together with all costs, disbursements,
8 interest from the date of judgment, and other relief the Court deems appropriate.

9 DATED: November 2, 2020

ROSSI VUCINOVICH PC

10 By: s/ James K. Vucinovich
11 James K. Vucinovich, WSBA #29199
12 ATTORNEYS FOR PLAINTIFF
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